Cl. 2771 5

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench

S.A. NO. 11 /2006

APPELLANT : Radhe Shyam Verma, S/o Lunkaran Verma, Proprietor Verma Rewinding Shop, near petrol pump, Dak Banglow Ward, Baster Road, Dhamtari & Road- Nayapara Ward, Dhamtari Distt. Dhamtari (C.G.)

DEFENDANT

P.R. No. 70 Lok
Presented by Shri D.N. Rungta
dated 10/1/06

VERSUS

RESPONDENTS :1. E.P.Bachchan S/o G.P.Bachchan Retired Principle Menonite Higher Secondary School, Dhamtari R/o Dak Banglow Ward, Baster Road, Dhamtari Tahsil & Distt. Dhamtari (C.G.)

Plaintiffs

2. Vinaykant Bachchan, S/o E.P.Bachchan, Master, Machinist N.M.D.C./N.D.S. 218 Type-3, Post Kirandul, Distt. Dantewada (Baster) C.G.

SECOND APPEAL U/S. 100 OF THE CODE OF

26

HIGH COURT OF CHHATTISGARH AT BILASPUR

Second Appeal No. 11 of 2006

Radhe Shyam Verma

Versus

E.P. Bachchan and another

POST FOR ORDER ON 3 - 05 - 2006

Sd/-
Dhirendra Mishra
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

SECOND APPEAL NO. 11 OF 2006

Appellant/defendant : Radhe Shyam Verma

Vs.

Respondents/plaintiffs : E.P. Bachchan and another

Shri D.N. Prajapati, learned counsel for the appellant/defendant.

ORDER
(Passed on 3.05.2006)

Dhirendra Mishra, J

Heard on admission.

2. This is the defendant's second appeal under Section 100 of the Code of Civil Procedure as Civil Appeal No. 7-A/05 preferred by him against the judgment and decree dated 18.01.2005 passed by learned Second Civil Judge, Class-I, Dhamtari in Civil Suit No. 50-A/04 was dismissed by learned Additional District Judge, Dhamtari vide impugned judgment dated 26th November 2005. (Parties hereinafter shall be described as per their description before the trial Court.)

3. Case of the plaintiffs before the learned Civil Judge was that a suit for eviction and vacant possession was filed by them with an averment that plaintiff No. 1 is the landlord and owner of the suit property and the same was let out on hire to the defendant for commercial purposes on a monthly rent of Rs. 225/-. Plaintiff No. 1 requires the suit property for real and bonafide need of his son plaintiff No. 2 and he has also executed a Will in favour of his son with respect to the suit property. Plaintiff No. 2 was at that time working on the post of Master Mechanist and was about to retire after 2 ½ to 3 years. He is I.T.I. trained and is conversant with repairing, running, manufacturing of the spare parts of machines

and after taking voluntary retirement proposes to start his own business from the suit premises and look after their parents. He does not have any suitable alternative commercial accommodation in Dhamtari for the said purpose. Since the defendant did not pay rent from July 1999 to July 2002 and the plaintiffs require the suit property bonafidely, the tenancy of the defendant was terminated w.e.f. 31st August 2002 vide notice dated 06.08.2002. Though the defendant paid the arrears of rent up to October 2002 but he did not deliver the vacant possession of the suit house to the plaintiffs. Hence the instant suit was filed.

4. The defendant in his written statement admitted that plaintiff No. 2 is the owner of the suit shop. However, he denied that the plaintiffs require the suit shop for their bonafide necessity. Plaintiff No. 1 has no right to institute a suit and the defendant cannot be evicted from the suit accommodation on the ground of future possibilities. Plaintiff No. 1 is residing with his daughter namely Aasna in Raipur and plaintiff No. 2 is employed and he has alternative accommodation for commercial and residential purposes. Plaintiff No. 2 has a commercial accommodation adjacent to the tenanted shop beside the road and he has also a huge residential accommodation on the back side and the same is sufficient for residential and commercial purposes. Plaintiff No. 1 has three blocks adjacent to the suit accommodation which they have given on rent. The defendant has spent Rs. 7,000/- on maintenance of the suit accommodation, however, the same has not been refunded by the plaintiffs, therefore, the defendant is entitled to adjust the said amount towards rent of the suit accommodation.

5. On the basis of pleadings of the respective parties learned trial Court framed issues and after recording evidence of the parties, decreed the suit by recording a finding inter alia that plaintiff No. 1 requires the suit accommodation for the purposes of business of his son plaintiff No. 2 as his son does not have any suitable alternative accommodation for commercial purposes in Dhamtari town and as such they have bonafide requirement of the suit shop and they are entitled to obtain vacant possession of the suit shop. However, the claim of the plaintiffs that they are entitled for damages at the rate of Rs.50/- per day from the date of institution of the suit till delivery of vacant possession of the suit shop has

been negated. Similarly the claim of the defendant to receive Rs.7,000/- spent towards maintenance of the suit shop, has also been negated.

6. The appeal preferred by the appellant/defendant against the above judgment and decree was rejected by the learned Additional District Judge, Dhamtari by the impugned judgment with the identical finding.

7. Learned counsel for the appellant/defendant submitted that both the Courts below have ignored the admitted facts that plaintiff No. 2 is employed in National Mineral Development Corporation Bailadila (Kirandul) Bastar and his wife is also employed in the Education Department of the said project. Plaintiff No. 1 who is an old person is residing with his daughter for the last 5-6 years in Raipur along with his wife who is also 87 years old. Plaintiff No. 1 is possessed of number of movable and immovable properties in Dhamtari including three shops adjacent to the suit shop and plaintiff No. 2 has admitted this fact in his deposition. It is further submitted that plaintiff No. 1 did not appear before the trial Court to establish the fact that he requires the suit accommodation bonafidely and genuinely for the business of his son Vinay Kumar Bachchan. The suit is filed on the ground of bonafide necessity of plaintiff No. 2 who is admittedly working at Kirandul. However, there is no evidence on record to show that his wife is also prepared to resign and live with plaintiff No. 1 in Dhamtari. It is contended that from the pleadings, documentary and oral evidence available on record the following substantial questions of law arise for adjudication of this appeal;

(i) "Whether both the Courts below were right in decreeing the suit of the respondent/plaintiffs holding that they have proved bonafide need of disputed shop for non-residential purpose particularly when they have not produced any material regarding type of business and money required for opening such business and other things?"

(ii) "Whether both the Courts below were right in holding that the respondents/plaintiffs are having no other suitable

accommodation except disputed shop though two blocks are lying vacant which are adjacent to the disputed shop?"

(iii) "Whether both the Courts below were right in not drawing adverse inference against the respondents/plaintiffs as respondent No. 1 who filed the suit for eviction, did not get himself examined before the trial Court?"

8. Relying upon the judgment of the M.P. High Court reported in **2000 M.P.A.C.J.** in the matter of **Raj Kumar Vs. Omprakash Bahal and others** learned counsel for the appellant/defendant argued that in the absence of any specific pleading by the plaintiffs in their plaint that they do not have any alternative suitable accommodation for their business in Dhamtari town and in the cross-examination admitting the availability of alternative accommodation adjacent to the disputed shop, disentitles them the decree of eviction on the ground of bonafide necessity.

9. I have heard learned counsel for the appellant/defendant on admission.

10. So far as proposed substantial question of law No.1 is concerned, learned first appellate Court relying upon the statement of Vinay Kant (Plaintiff No. 2) has held that it is established that after taking voluntary retirement plaintiff No. 2 Vinay Kant wishes to reside in Dhamtari with his father and look after him and he also proposes to open a workshop in the disputed shop as he is well conversant with machine related business. From the pleadings and evidence of this witness it is clear that at the time he deposed before the Court he was 57 years of age and as such was at the verge of retirement. It is open to the landlord who is engaged in service to resign from service and start a business from the suit premises and the tenant has no right to direct the landlord or expect that the landlord should continue in his service. It is the prerogative of the landlord and his son to get the tenant evicted on the ground of bonafide necessity and there is no bar that the landlord cannot file eviction suit on the ground of bonafide necessity. Elaborately discussing the evidence available on record the learned

appellate Court has confirmed the judgment and decree passed by the trial Court holding that plaintiff No. 1 bonafidely needs the suit shop for commercial purposes of his son plaintiff No. 2. Therefore, the first proposed question of law is in fact a question of fact which has been decided by both the Courts below in favour of the plaintiffs.

11. So far as the second proposed question of law that the plaintiffs have alternative suitable accommodation for their commercial purposes adjacent to the disputed shop is concerned, it is also the question of fact and the Court below after discussing the oral evidence adduced by the respective parties has held that the accommodation admitted by plaintiff No. 2 Vinay Kant to be vacant is a residential accommodation and there is no evidence on record to show that any alternative non-residential accommodation belonging to the plaintiffs is vacant in the city of Dhamtari and even the defendant has admitted in paragraph – 7 of his deposition that except the disputed shop there is no other shop fitted with shutters in the possession of the plaintiffs and the vacant blocks were used for residential purposes by the bank employees in the past. Thus taking into consideration the evidence of both the parties, the lower appellate Court confirmed the finding of fact recorded by the trial Court that the plaintiffs do not have any suitable alternative non-residential accommodation in the city of Dhamtari for the purposes of their proposed business.

12. The third question of law raised by the appellant/defendant has also been elaborately dealt with by both the Courts below. The suit has been jointly filed by plaintiffs No. 1 and 2 who are father and son, on the ground of bonafide necessity of the disputed shop. The plaintiff No. 1 is admittedly 92 years old who is suffering from various ailments and therefore, he appointed plaintiff No. 2 as his attorney for the purpose of institution of the suit and plaintiff No. 2 for whose bonafide necessity the suit shop is required, has deposed before the trial Court on the basis of his personal knowledge and therefore, both the Courts below have held that no adverse inference could be drawn against plaintiff No. 1 for not entering into the witness box as the reasons assigned for his non-examination were just and proper.

13. However, the above cited case is not applicable in the present case because the plaintiffs have pleaded in para -10 of the plaint that in Dhamtari there is abundant scope for machine related business and they do not have any other suitable commercial accommodation beside the national highway in Dhamtari except the suit shop.

14. On the basis of aforesaid analysis, this Court is of the considered view that all the questions raised by the appellant/defendant are questions of fact which have been elaborately dealt with by both the Courts below and finding of the trial Court which has been subsequently confirmed by the first appellate Court is based on proper appreciation of evidence available on record and no question of law much less any substantial question of law is involved for adjudication of this appeal. Therefore, the appeal being devoid of merit deserves to be dismissed at the motion stage itself and it is accordingly dismissed.

Sd/-
Dhirendra Mishra
Judge